

August 20, 2019

By ECFS

Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Re: In the Matter of Request for Review and Petition for Waiver by BTI Communications Inc.
(WC Docket No. 11-42)**

Dear Ms. Dortch:

CGM, LLC (CGM) hereby submits the attached letter responding to the filing by BTI Communications, Inc. (BTI) in this docket and providing clarifying information.¹ The letter contains confidential CGM trade secrets and commercial information exempted from mandatory disclosure under “Exemption 4” of the Freedom of Information Act (FOIA)² and Section 0.457(d) of the Commission’s rules.³ Consequently, in accordance with the FCC’s rules, CGM files this non-confidential, redacted version of the letter via ECFS concurrently with the filing of the confidential, un-redacted version of the letter with the FCC under separate cover.⁴

¹ See Request for Review and Petition for Waiver by BTI Communications Inc., WC Docket No. 11-42 (filed July 3, 2019) (attached).

² See 5 U.S.C. § 552(b)(4). Public disclosure is not required for “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” *Id.*

³ 47 C.F.R. § 0.457(d). See *S. Co., Request for Waiver of Section 90.629 of the Commission’s Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, para. 17 (WTB 1998).

⁴ See 47 C.F.R. § 0.459(a)(2).

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Please don't hesitate to call or email me if additional information would be helpful.

Respectfully,

Chuck Campbell

Chuck Campbell

Partner

CGM, LLC

104 Sloan Street

Roswell, GA 30075

Chuck.campbell@cgminc.com

770-843-0089

Enclosures

² *Id.* at 1.

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[REDACTED]

[END CONFIDENTIAL INFORMATION] Between the contract execution date and September 2016, BTI made a few attempts to deliver the data required to CGM, but each time the data were in the wrong formats and incomplete. BTI never provided the required procedural documentation. This timespan was marked with long periods of no communication from BTI, which prompted numerous emails from CGM asking if BTI was still interested in completing the project. [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [END CONFIDENTIAL INFORMATION]. At that time, BTI announced that it had received a USAC audit and wanted assistance in developing its response. CGM referred BTI to Moss Adams for assistance.

Please don't hesitate to call or email me if additional information would be helpful.

Respectfully,

Chuck Campbell

Chuck Campbell
Partner
CGM, LLC
104 Sloan Street
Roswell, GA 30075
Chuck.campbell@cgminc.com
770-843-0089

Enclosures

ATTACHMENT

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
Request for Review of Decision of)	
Universal Service Administrator and)	
Petition for Waiver)	
by BTI Communications Inc.)	

**REQUEST FOR REVIEW AND PETITION FOR WAIVER
BY BTI COMMUNICATIONS INC.**

BTI Communications Inc., d/b/a Telzeq Communications (“Telzeq”), by its attorney and pursuant to Sections 1.3 and 54.719(c) of the Federal Communications Commission’s (“FCC” or “Commission”) Rules,¹ respectfully requests that the Commission waive the Universal Service Administrative Company’s (“USAC”) application of FCC Rule 54.404 and allow Telzeq to receive Lifeline support for its qualified customers due to a clear-cut case of circumstances beyond Telzeq’s control. Specifically, Telzeq contracted with a telecommunications consultant to have that consultant enter customer information into the National Lifeline Accountability Database (“NLAD”) per FCC Rule 54.404(b). Simply put, the consultant failed to perform this task, resulting in a USAC audit and recovery of Lifeline support for otherwise qualified Lifeline customers.

Telzeq is a small provider of Lifeline telecommunications services and specializes in providing essential telecommunications services to the low-income and

¹ **47 C.F.R. § 1.3 and § 54.719(c).**

underprivileged in New York City. On May 17, 2019, USAC sent a letter to Telzeq, informing Telzeq that it had violated the FCC’s Lifeline Rules by failing to properly enter customer information into the NLAD and stating that this rule violation resulted in an overpayment to Telzeq of \$272,820.² While Telzeq understands and appreciates the Commission’s efforts to enforce Lifeline revenue reporting through the use of hard deadlines and confirmed NLAD entries, the resulting recovery of Lifeline funding from a small business like Telzeq represents an egregious and excessively punitive burden, likely putting Telzeq out of business. As demonstrated below, good cause exists to grant Telzeq’s request for a temporary waiver of the FCC’s NLAD reporting rule.

The Commission may waive any of its rules if the petitioner shows “good cause.”³ Furthermore, a waiver may be granted if: 1) the waiver would better serve the public interest than would application of the rule; and 2) special circumstances warrant a deviation from the general rule.⁴ Circumstances that would justify a waiver include “considerations of hardship, equity, or more effective implementation of overall policy.”⁵ Generally, the Commission may grant a waiver of its own rules if the relief requested would not undermine the policy objectives of the rule in question, and would otherwise serve the public interest.⁶

Telzeq is a small business operating in Brooklyn, New York. Telzeq contracted with and paid CGM LLC (“CGM”), a telecommunications consulting company that

² See attached May 17, 2019 Letter from USAC to Yitschok Lichetnstein [*sic*].

³ 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

⁴ *Northeast Cellular*, 897 F.2d at 1166.

⁵ *WAIT Radio*, 418 F.2d at 1159.

⁶ *Id.* at 1157.

specializes in USAC and Lifeline compliance, to properly enter Telzeq Lifeline customer data into the NLAD.⁷ CGM, for unknown reasons, did not enter most of Telzeq customers into the NLAD. It has been and is Telzeq policy that all Telzeq customers are reviewed in accordance with the FCC's Lifeline eligibility Rules and Telzeq works in good faith to ensure that its customers meet the FCC's Lifeline criteria. CGM was hired to enter these customers into the NLAD. All but one (which was a duplicate by a clerical error) of Telzeq's customers that were claimed on Telzeq's FCC Form 497 were indeed eligible subscribers. Unfortunately, unbeknownst to Telzeq, CGM failed to enter this data into the NLAD. Telzeq, as a small firm, justifiably relied upon the experience and expertise of an external consulting firm to handle the labor-intensive administrative functions of uploading eligible Lifeline applicants into the NLAD. Telzeq could not have known that the long-established consulting firm would fail to perform the task it was contracted to do. Immediately upon discovering this issue,⁸ Telzeq worked assiduously to upload its subscribers into the NLAD system and has instituted internal procedures to ensure that its data entry and form submissions occur in a correct and timely manner.

Having paid CGM to provide customer data in the NLAD, Telzeq could not have known that CGM would not do what it was contracted to do and promised to do. CGM's failure appears to be a straightforward case of negligence. Telzeq understands that "simple negligence" is not grounds for grant of a request for waiver,⁹ but in the instant

⁷ Telzeq contracted directly with a principal at CGM. CGM's website can be accessed at <https://cgmlc.net/About>.

⁸ Telzeq first became aware of this issue via a previous USAC audit where USAC demanded a recovery of \$40,774. With the May 17, 2019 USAC Letter and substantial recovery amount, Telzeq hired counsel.

⁹ See, e.g., *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; Requests for Review of Decisions of Universal Service Administrator*

case, the negligence on CGM's part was a circumstance outside of Telzeq's control. The Commission will grant a request for waiver due to reasons beyond the service provider's control where there were good faith efforts to comply.¹⁰ In Telzeq's case, the company worked in good faith to confirm its customers Lifeline eligibility and it contracted with CGM to input the proper eligibility data into the NLAD. However, Telzeq could not control, nor could Telzeq predict the surprisingly negligent behavior of a third-party consultant. The failure of CGM to perform its NLAD duties was an obvious circumstance beyond the control of Telzeq.¹¹ Accordingly, good cause exists for grant of Telzeq's request for waiver.

FCC Rule 54.404(b) requires Lifeline customers to be verified by the NLAD.¹² The underlying purpose of this Rule is to prevent fraud and misuse of funds within the Lifeline portion of the federal Universal Service Fund ("USF"). As Telzeq demonstrated in its conversations with USAC, Telzeq was operating in good faith and with an understanding of the FCC Lifeline Rules and there is no evidence of fraud or misuse of funds. Strict application of the FCC Rules will not serve the public interest as it will eliminate a provider of essential Lifeline services in New York City without any evidence of fraud or misuse of funds. This is consistent with the FCC's determination where there is "no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core

***by Airband Communications, Inc. et al.*, WC Docket No. 06-122, CC Docket No. 96-45, Order, 25 FCC Rcd 10861 (WCB 2010).**

¹⁰ ***See Requests for Waiver of the Decisions of the Universal Service Administrator by Grants/Cibola County School District and Jemez Pueblo Tribal Consortium*, CC Docket No. 02-6, Order, 33 FCC Rcd 10048, 10051, para. 8 (WCB 2018).**

¹¹ **While third-party dereliction of duty by no means rises to the level of a hurricane, unpredictable circumstances beyond a carrier's control certainly warrant grant of a waiver. *See in re Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 18-102 (February 2, 2018).**

¹² **47 C.F.R. § 54.404(b).**

program requirements,” that a waiver grant is warranted.¹³ Furthermore, denial of funding in this case would inflict “undue hardship” on Telzeq.¹⁴

The \$272,820 overpayment harms Telzeq and is inequitable in light of Telzeq’s demonstrated good faith efforts to comply with the FCC’s Lifeline Rules and a case of third-party negligence that was plainly outside of Telzeq’s control. The overpayment is inequitable and unjustly penalizes a small business providing a valuable service to low-income patrons in New York City. The Commission has granted a waiver in the past where “imposition of associated interest and penalties” would “disproportionately penalize” a contributor.¹⁵ The “magnitude of the interest and penalties”¹⁶ of \$272,820¹⁷ unjustly penalizes Telzeq and is not in the public interest.

For the reasons set forth herein, Telzeq respectfully requests that the Commission grant this petition for waiver and direct USAC to review Telzeq’s updated NLAD entries

¹³ *See, e.g., Requests for Review and Waiver of the Decisions of the Universal Service Administrator by Alaska Gateway School District Tok, AK, et al.*, CC Docket No. 02-6, Order, File Nos. SLD-412028, *et al.* (September 14, 2006).

¹⁴ *Id.*

¹⁵ *See in re Universal Service Contribution Methodology*, WC Docket No. 06-122, *Petition for Reconsideration by Ascent Media Group, Inc., Order on Reconsideration*, DA 13-966 at ¶ 11 (May 3, 2013) (“*Ascent Order*”).

¹⁶ *Id.*

¹⁷ This figure does not include the previous overpayment penalty of \$40,774. For the same reasons discussed herein, Telzeq requests that the Commission also grant the necessary waivers to allow Telzeq to receive Lifeline funding on the \$40,774 overpayment.

and provide funding where Telzeq's customers meet the FCC's Lifeline eligibility criteria.

Respectfully submitted,

BTI COMMUNICATIONS INC.

By: */s/ Kenneth C. Johnson*

Kenneth C. Johnson

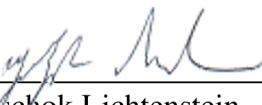
Its Attorney

Dated: July 3, 2019

DECLARATION OF YITSCHOK LICHTENSTEIN

I, Yitschok Lichtenstein, do declare under penalty of perjury, the following:

1. I am the President of BTI Communications Inc.
2. I have read the foregoing "Request for Review and Petition for Waiver." I have personal knowledge of the facts set forth therein and I believe them to be true and correct.



Yitschok Lichtenstein

7/2/2019

Date



Via Certified Mail and Email

May 17, 2019

Yitschok Lichetnstein
BTI COMMUNICATIONS INC.
4203 13th Ave
Brooklyn, NY 11219

Re: Notice of Determination of Amounts Owed to the Universal Service Fund by BTI COMMUNICATIONS INC. and Intent to Recoup and/or Offset Funds

Dear Yitschok Lichetnstein:

The Universal Service Administrative Company (USAC), through its administration of the Federal Communications Commission's (FCC or Commission) universal service Lifeline program, has determined that BTI COMMUNICATIONS INC. (Company) violated the FCC's Lifeline program rules. The Company's rule violations resulted in the Company receiving \$272,820 in overpayments from the Lifeline program from August 2016 through July 2017, as detailed in the spreadsheet attached to this letter (collectively, the "Overpayment").

The Company is an eligible telecommunications carrier (ETC) providing Lifeline program service in designated areas. Except in the states that have opted out of the National Lifeline Accountability Database (NLAD), all ETCs providing Lifeline service are required to enter new and existing Lifeline subscribers into the NLAD and indicate whether the subscriber is eligible to receive enhanced Tribal Lifeline support.¹ According to USAC's program integrity review of NLAD records, the Company failed to enter all subscribers claimed on the FCC Forms 497 into NLAD, and therefore improperly claimed based amount and, in some cases, enhanced Tribal support for those subscribers from August 2016 through July 2017.²

As administrator, USAC is required to initiate recovery actions for payments given in violation of the FCC's Lifeline program rules.³ USAC has reviewed the Company's Lifeline reimbursements, NLAD, and other program records and determined that the Company violated Section 54.404(b)(6) of the Commission's rules by failing to transmit its subscriber data to

¹ See 47 C.F.R. § 54.404(b).

² See generally Lifeline Worksheet, FCC Form 497, OMB 3060-0819 (July 2016).

³ See 47 C.F.R. § 54.707(a) (specifying USAC has the authority to "verify discounts, offsets and support amounts provided by the universal service support programs, and may suspend or delay discounts, offsets, and support amounts provided to a carrier if the carrier fails to provide adequate verification of discounts, offsets, or support amounts provided upon reasonable request, or if directed by the Commission to do so.").

NLAD.⁴ Based on the Company's failure to comply with this requirement, USAC has determined that the Company filed one or more improper FCC Forms 497 from August 2016 through July 2017, and that based on those FCC Forms 497, the Company received the \$272,820 Overpayment.⁵ The Overpayment and recovery sought apply only to SACs in states that have not opted out of NLAD.

USAC determined the Overpayment amount by calculating the total number of overclaimed subscribers for each study area code (SAC) per month and the total amount of Lifeline support disbursed attributed to the overclaimed subscribers.

First, USAC compared the number of claimable subscribers to the number of subscribers filed on the Company's FCC Forms 497. Claimable subscribers for August 2016 through July 2017 are the number of subscribers enrolled in NLAD as of the snapshot date for each month. After USAC determined the number of claimable subscribers per SAC for August 2016 through July 2017, USAC determined the number of overclaimed subscribers by SAC per month by comparing the claimable numbers against the number of subscribers claimed on the Company's FCC Forms 497 by SAC for each month.

Next, USAC determined the amount overclaimed for enhanced Tribal support. USAC determined the Tribal overclaimed amount by comparing the number of Tribal subscribers claimed on the Company's FCC Forms 497 to the total number of subscribers in NLAD per SAC per month. If the number of Tribal subscribers claimed on the FCC Form 497 was larger than the total number of subscribers in NLAD, USAC calculated the Tribal overclaimed amount by subtracting the number of claimable subscribers from the number of Tribal subscribers claimed on the FCC Form 497 and multiplying by the average Tribal support amount claimed for that SAC for that month. Thus, USAC did not penalize ETCs for failing to mark subscribers as Tribal in NLAD, because Tribal overclaims were only calculated when the number of Tribal subscribers on the Company's FCC Forms 497 were greater than the total number of subscribers in NLAD; the number of subscribers marked as Tribal in NLAD was not part of the analysis.

Lastly, USAC calculated the total disbursement amount attributed to the overclaimed subscribers for each SAC per month. USAC determined the non-Tribal overclaimed amount by taking the total number of overclaimed subscribers, reducing it by the Tribal overclaimed subscribers (if any), and multiplying by \$9.25. USAC determined the Tribal subscriber overclaimed amount by taking the total number of Tribal overclaimed subscribers (if any), and multiplying by the Tribal rate. To determine the total amount overclaimed, USAC summed the non-Tribal overclaimed amount and the Tribal overclaimed amount. This chart provides hypothetical illustrations of how USAC determined the overclaimed amount.

⁴ See 47 C.F.R. § 54.404(b)(6).

⁵ *Lifeline Link Up Reform and Modernization et al.*, WC Docket No. 11-42, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6785, para. 299 (2012) ("We intend to pursue recapture of any funds that ETCs obtain in violation of our rules...").

SAC	Number of Tribal Subs on Form 497	Number of Non-Tribal Subs on Form 497	Total Subs Claimed on Form 497	Subs in NLAD Snapshot	Total Number of Overclaimed Subs	Tribal Overclaimed Subs (w/average claim of \$34.25)	Non-Tribal Overclaimed Subscribers (at \$9.25)	Total Overclaimed Amount
123456	50	50	100	40	60	10	50	342.5+462.5 = \$805
987654	50	50	100	60	40	0	40	\$370

USAC excluded SAC 159021 in November 2016 from the total recovery amount since this SAC was already audited for compliance with the Lifeline program rules (USAC Audit No. LI2017LR004). This audit recovered \$40,774 from the Company for claiming subscribers on the audit period subscriber listing that were not active in NLAD and failing to remove subscribers from NLAD within the required time frame. As a result, USAC will not seek additional recovery for this SAC month.

The Company has the right to appeal this decision letter. If the Company wishes to appeal this decision, it must file an appeal pursuant to the requirements of 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at <http://www.usac.org/about/about/program-integrity/appeals.aspx>. If the Company does not appeal this decision letter within the time frame permitted under 47 C.F.R. Part 54, Subpart I, this decision letter will become a final non-appealable decision by USAC.

Upon a final non-appealable decision by the FCC or USAC that the Overpayment is owed and without further notice to Company, USAC will offset and/or recoup the Overpayment from all Lifeline and other payments then owed to the Company, and will continue to offset and/or recoup the Overpayments against future payments owed to the Company until the Overpayment and all related charges have been paid in full.

Pursuant to the FCC's "Red Light Rule,"⁶ unless an administrative appeal of, or a judicial proceeding contesting the existence of the Overpayment is pending, (1) neither the FCC nor USAC will act on any of the Company's applications or any requests for payment or other benefits until the Overpayment is paid in full or resolved and (2) further, if the Overpayment is not paid in full within thirty (30) days of the date of this letter, the FCC and USAC will offset any payments against the Overpayment until the balance is repaid.⁷

If the Company has evidence establishing that it does not owe the Overpayment, the Company has fifteen (15) days from the date of this letter to provide such evidence to USAC. The Company may request an opportunity to inspect and copy the records of USAC and the FCC related to the Overpayment and/or a written agreement to repay the Overpayment, but only if the Company makes such request(s) within fifteen (15) days of the date of this letter. An explanation of the process by which a company may request a repayment agreement can be found at <https://www.usac.org/cont/payers/payment-plans.aspx>. All payment plan requests are subject to the FCC's approval. Payment of the Overpayment should be made as provided at: www.usac.org/pay.

⁶ For more information on the FCC's Red Light Rule, please see the FCC's website, *available at* <https://www.fcc.gov/encyclopedia/red-light-frequently-asked-questions> (last visited March 13, 2018).

⁷ See 47 C.F.R. §§ 1.1910, 1.911, 1.1912.

USAC will continue to examine this matter and reserves the right to review additional records to verify the Overpayment amount as well as the accuracy and integrity of other Lifeline support payments to the Company and to take appropriate action to protect the interests of the Universal Service Fund.

Sincerely,

//s// USAC

Enclosures